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10 11	Conseco Life Insurance Company		
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15	STRVITURION) CASE NO.: M:10-CV-02124-SI	
16)	
17	IN RE CONSECO LIFE INSURANCE) STIPULATION AND PROPOSED	
18	COMPANY LIFETREND INSURANCE SALES AND MARKETING LITIGATION	ORDER CONCERNING CLASS CERTIFICATION BRIEFING	
19) SCHEDULE AND HEARING)	
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INTRODUCTION

By Order on February 11, 2010, the Court set a scheduling conference in this multidistrict litigation ("MDL") for March 12, 2010. (MDL Docket No. 2.) The Court previously, however, had set a hearing for March 5, 2010 on plaintiffs' motion for class certification in Brady, et al. v Conseco, Inc. et al., No. 3:08-CV-05746-SI (N.D. Cal.), one of the three actions subsumed into the MDL. (Brady Docket No. 74.) Counsel for defendant Conseco Life Insurance Company ("Conseco Life") submitted a letter to the Court requesting that the hearing in the *Brady* matter be deferred until MDL scheduling could be coordinated. (MDL Docket No. 3.) After Conseco Life filed its letter, Plaintiffs' counsel in the MDL and counsel for Conseco Life conferred and agreed to the course of action outlined below, which would have the effect of removing the March 5, 2010 hearing from the Court's calendar.

RECITALS

WHEREAS, on December 24, 2008, plaintiffs Cedric Brady, Dr. Charles Hovden, Dr. Marion Hovden, Dr. Eugene Kreps, Dr. John McNamara, Dr. Hisaji Sakai, and Jean Sakai (the "Brady Plaintiffs") filed a complaint against Conseco Life in the San Francisco Division of the United States District for the Northern District of California in a case captioned Brady, et al. v Conseco, Inc. et al., No. 3:08-CV-05746-SI;

WHEREAS, on July 2, 2009, plaintiff Bill McFarland ("McFarland") filed a complaint against Conseco Life in the Jacksonville Division of the United States District for the Middle District of Florida in a case captioned McFarland v. Conseco Life Ins. Co., No. 3:09-CV-TJC-MCR;

WHEREAS, on October 6, 2009, McFarland filed a motion for class certification in the Middle District of Florida ("McFarland Motion");

WHEREAS, Conseco Life has not filed an opposition to the McFarland Motion, and no opposition is due, and no hearing date is set;

WHEREAS, on December 1, 2009, the Brady Plaintiffs filed a motion for class certification in the Northern District of California ("Brady Motion");

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WHEREAS, on January 29, 2010, Conseco Life filed an opposition to the Brady Motion;

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WHEREAS, the Brady Plaintiffs are scheduled to file a reply in further support of the Brady Motion on February 19, 2010, and a hearing on the Brady Motion is scheduled for March 5, 2010;

WHEREAS, on February 5, 2010, pursuant to a transfer order from the United States Panel on Multidistrict Litigation, the Court established this MDL consolidating the *Brady* case, the McFarland case, and another individual (non-class action) case (Muldrow v. Conseco Life Ins. Co., No. 4:08-CV-552-RH-WCS (N.D. Fla. filed Dec. 12, 2008));

WHEREAS, the Brady Plaintiffs, McFarland and Conseco Life wish to avoid inefficiency and the inconsistent adjudication of the Brady Motion and the McFarland Motion;

WHEREAS, in light of the establishment of the MDL, the Brady Plaintiffs and McFarland wish to file a consolidated motion for class certification;

WHEREAS, the Brady Plaintiffs, McFarland and Conseco Life have conferred and agree 13 | that the Brady Plaintiffs and McFarland may withdraw their respective motions for class certification, and file a joint, consolidated motion for class certification for consideration by the Court: and

WHEREAS, Local Rule 7-4 imposes a page limit of twenty-five pages on a brief or memorandum of points and authorities filed in support of a motion or opposition, and a page limit of fifteen pages on a reply memorandum.

STIPULATION

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by the undersigned as follows:

- 1. The Brady Motion and the McFarland Motion shall be withdrawn without prejudice, and the hearing on the Brady Motion currently scheduled for March 5, 2010 in Brady, No. 3:08-CV-05746, shall be removed from the Court's motion calendar;
- 2. The Brady Plaintiffs and McFarland may file a joint, consolidated motion for class certification, which motion may not exceed fifty pages in length and may be filed no later than March 11, 2010 ("Joint Motion For Class Certification");

1	3. Conseco Life may file an opposition to the Joint Motion For Class Certification not	
2	to exceed sixty pages in length no later than April 22, 2010;	
3	4. The Brady Plaintiffs and McFarland may file a joint, consolidated reply	
4	memorandum in further support of the Joint Motion For Class Certification not to exceed twenty-	
5	five pages in length no later than May 13, 2010;	
6	5. A hearing on the Joint Motion For Class Certification may be heard on May 28,	
7	2010, or at any other subsequent time as the Court's schedule may permit.	
8	DATED: February 16, 2010 Millstein & Associates	
9	Den /a/ Deni 1 I Millata in	
10	By: /s/ David J. Millstein David J. Millstein	
11	Attorneys for the Brady Plaintiffs	
12	DATED: February 16, 2010 Gilbert LLP	
13	By: /s/ August J. Matteis, Jr.	
14	August J. Matteis, Jr. Attorneys for the Brady Plaintiffs	
15	Theorneys for the Brudy Thumburis	
16	DATED: February 16, 2010 Berman DeValerio	
17	By: /s/ Michael Pucillo	
18	Michael Pucillo Joseph J. Tabacco	
19	Chris Heffelfinger	
20	Attorneys for Plaintiff McFarland	
21	DATED: February 16, 2010 Skadden, Arps, Slate, Meagher & Flom LLP	
22		
23	By: <u>/s/ David S. Clancy</u> Raoul D. Kennedy	
24 25	James R. Carroll (Admitted <i>Pro Hac Vice</i>) David S. Clancy (Admitted <i>Pro Hac Vice</i>)	
26	Attorneys for Defendant	
27	Conseco Life Insurance Company	
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STIPULATION 3 CASE NO.: M:10-CV-02124-SI

ATTESTATION PURSUANT TO GENERAL ORDER 45 I, David S. Clancy, am the ECF User whose ID and password are being used to file this Stipulation And Proposed Order. In compliance with General Order 45.X.B, I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of February, 2010, at Boston, Massachusetts. By: /s/ David S. Clancy David S.Clancy PURSUANT TO STIPULATION, IT IS SO ORDERE Dated: By: Hon. Susan Illston